



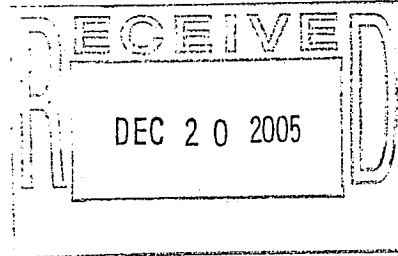
# DEPARTMENT OF CONSERVATION

## DIVISION OF LAND RESOURCE PROTECTION

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December 14, 2005



Dan Leavitt  
California High Speed Rail Authority  
925 L Street, Ste. 1425  
Sacramento, CA 95814

Subject: SCH# 2005112051, Notice of Preparation of a Draft Environmental Impact Report/Statement (DEIR/S) for the Bay Area to Central Valley High Speed Train

Dear Mr. Leavitt:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Notice of Preparation (NOP) for the above-referenced project. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the project's impacts on agricultural land and resources.

### Project Description

The High Speed Train system would extend over 700 miles, and be capable of speeds over 200 miles per hour with electrically powered trains on fully grade-separated tracks with state of the art safety, signaling, and train control systems. The proposed system would connect and serve California's major metropolitan areas from Sacramento, San Francisco Bay Area cities and extend to Los Angeles and San Diego.

### Agricultural Setting of the Project

The DEIR/S should describe the known areas that will be converted from farmland to another use as a result of this project and its related projects. How many separate projects and corridors are planned, and how many acres would potentially be impacted or converted to another use? Changes in land uses associated with this project may impact several thousands of acres of farmland. The Division's Important Farmland Map for each County should be utilized to identify agricultural land within the project site and in the surrounding area that may be impacted. Acreages for each land use designation should be identified for both areas. Likewise, the counties' Williamson Act Map should be utilized to identify potentially impacted contract, Farmland Security Zone (FSZ) and agricultural preserve land by acreage and whether it is prime or nonprime agricultural

land according to definition in Government Code §51201(c). Maps of the Important Farmland and Williamson Act land should be included in the DEIR/S.

In addition, we recommend including the following items of information to characterize the agricultural land resource settings of the Plan's related projects:

- Current and past agricultural use of the project area. Include data on the types of crops grown, crop yields and farm gate sales values.
- To help describe the full agricultural resource value of the soils of the site, we recommend the use of economic multipliers to assess the total contribution of the site's potential or actual agricultural production to the local, regional and state economies. State and Federal agencies such as the UC Cooperative Extension Service and USDA are sources of economic multipliers.

#### Project Impacts on Agricultural Land

The Department recommends that the following information be included in the DEIR/S in the analysis of project-specific impacts:

- Type, amount, and location of farmland lost to project implementation. The conversion of Prime Farmland, Unique Farmland or Farmland of Statewide Importance is considered a potentially significant adverse impact.
- A discussion of conflicts with Williamson Act contracts, including termination in order to accommodate the Plan's projects. The DEIR/S should also discuss the impacts that conflicts or termination would have on nearby properties under contract; i.e., growth-inducing impacts from the perspective that the removal of contract protection removes a barrier to development and results in an incentive to shift to a more intensive land use such as urban development. The termination of a Williamson Act contract is considered a potentially significant adverse impact.
- Indirect impacts on current and future agricultural operations; e.g., land-use conflicts, increases in land values and taxes, vandalism, population, traffic, water availability, etc.
- Growth-inducing impacts, including whether leapfrog development is involved.
- Incremental project impacts leading to cumulatively considerable impacts on agricultural land. These impacts would include impacts from the proposed project as well as impacts from past, current and probable future projects. The Division's farmland conversion tables may provide useful historical data.
- Impacts on agricultural resources may also be quantified and qualified by use of established thresholds of significance (CEQA Guidelines §15064.7). We highly recommend the use of the Land Evaluation Site Assessment (LESA) Model, as the tool provides a numeric and objective basis for determining level of significance of project impacts on agricultural resources. Information is available on the Department's website.

#### Williamson Act Lands

The Department recommends that the following information be included in the DEIR/S regarding Williamson Act lands impacted by project implementation.

As a general rule, land can be withdrawn from Williamson Act contract only through the nine-year nonrenewal process. Immediate termination via cancellation is reserved for "extraordinary", unforeseen situations (See Sierra Club v. City of Hayward (1981) 28 Cal.3d 840, 852-855)). Furthermore, it has been held that "cancellation is inconsistent with the purposes of the (Williamson) act if the objectives to be served by cancellation should have been predicted and served by nonrenewal at an earlier time, or if such objectives can be served by nonrenewal now" (Sierra Club v. City of Hayward). Given the extended phasing and time periods involved in a city's or county's general plan, it appears feasible to utilize the nonrenewal process if contract termination is necessary for implementation of the Plan.

- If cancellation is proposed, notification must be submitted to the Department when the County or City accepts the application as complete (Government Code §51284.1). The board or council must consider the Department's comments prior to approving a tentative cancellation. Required findings must be made by the board or council in order to approve tentative cancellation. Cancellation involving FSZ contracts include additional requirements. We recommend that the DEIR/S include discussion of how cancellations involved in this project would meet required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation. (The notice should be mailed to the Director of the Department of Conservation, c/o Division of Land Resource Protection, 801 K Street MS 18-01, Sacramento, CA 95814-3528).
- Pursuant to Government Code §51243, if a city annexes land under Williamson Act contract, the city must succeed to all rights, duties and powers of the county under the contract unless conditions in §51243.5 apply to give the city the option to not succeed to the contract. A Local Agency Formation Commission (LAFCO) must notify the Department within 10 days of a city's proposal to annex land under contract (Government Code §56753.5). A LAFCO must not approve a change to a sphere of influence or annexation of contracted land to a city unless specified conditions apply (Government Code §§51296.3, 56426, 56426.5, 56749 and 56856.5).
- Termination of a Williamson Act/FSZ contract by acquisition can only be accomplished by a public agency, having the power of eminent domain, for a public improvement. The Department must be notified in advance of any proposed public acquisition (Government Code §51290 - 51292), and specific findings must be made. The property must be acquired in accordance with eminent domain law by eminent domain or in lieu of eminent domain in order to void the contract (§51295). The public agency must consider the Department's comments prior to taking action on the acquisition. School districts are precluded from acquiring land under FSZ contract. We recommend discussion in the DEIR/S of whether such action is envisioned by this project and how the acquisition will meet the required findings. However, notification must be submitted separately from the CEQA process and CEQA documentation to the address noted above.
- If any part of the site is to continue under contract, or remain within an agricultural preserve, after project completion, the DEIR/S should discuss the proposed uses for

those lands. Uses of contracted and preserve land must meet compatibility standards identified in Government Code §51238 - 51238.3, 51296.7. Otherwise, contract termination (see above) must occur prior to the initiation of the land use, or the preserve must be disestablished.

- An agricultural preserve is a zone authorized by the Williamson Act, and established by the local government, to designate land qualified to be placed under contract. Preserves are also intended to create a setting for contract-protected lands that is conducive to continuing agricultural use. Therefore, the uses of agricultural preserve land must be restricted by zoning or other means so as not to be incompatible with the agricultural use of contracted land within the preserve (Government Code §51230). The DEIR/S should also discuss any proposed general plan designation or zoning within agricultural preserves affected by the Plan and its related projects.

### Mitigation Measures

The Department encourages the use of agricultural conservation easements on land of at least equal quality and size as partial compensation for the direct loss of agricultural land. If a Williamson Act contract is terminated, or if growth inducing or cumulative agricultural impacts are involved, we recommend that this ratio be increased. We highlight this measure because of its acceptance and use by lead agencies as mitigation under CEQA. It follows a rationale similar to that of wildlife habitat mitigation. The loss of agricultural land represents a permanent reduction in the State's agricultural land resources. Agricultural conservation easements will protect a portion of those remaining resources and lessen project impacts in accordance with CEQA Guideline §15370.

Mitigation using agricultural conservation easements can be implemented by at least two alternative approaches: the outright purchase of easements or the donation of mitigation fees to a local, regional or statewide organization or agency whose purpose includes the acquisition and stewardship of agricultural conservation easements. The conversion of agricultural land should be deemed an impact of at least regional significance, and the search for replacement lands conducted regionally or statewide, and not limited strictly to lands within the project's surrounding area.

Other forms of mitigation may be appropriate for this project, including the following:

- Protecting farmland in the project area or elsewhere in the County through the use of less than permanent long-term restrictions on use such as 20-year Farmland Security Zone contracts (Government Code §51296 et seq.) or 10-year Williamson Act contracts (Government Code §51200 et seq.).
- Directing a mitigation fee to invest in supporting the commercial viability of the remaining agricultural land in the project area, County or region through a mitigation bank that invests in agricultural infrastructure, water supplies, marketing, etc.
- The Department also has available listing of approximately 30 "conservation tools" that have been used to conserve or mitigate project impacts on agricultural land. This compilation report may be requested from the Division at the address or phone number below.

Although the direct conversion of agricultural land and other agricultural impacts are often deemed to be unavoidable by an agency's CEQA analysis, mitigation measures must nevertheless be considered. The adoption of a Statement of Overriding Consideration does not absolve the agency of the requirement to implement feasible mitigation that lessens a project's impacts. A principal purpose of an EIR is to present a discussion of mitigation measures in order to fully inform decision-makers and the public about ways to lessen a project's impacts. In some cases, the argument is made that mitigation cannot reduce impacts to below the level of significance because agricultural land will still be converted by the project, and, therefore, mitigation is not required. However, reduction to a level below significance is not a criterion for mitigation. Rather, the criterion is feasible mitigation that lessens a project's impacts. Pursuant to CEQA Guideline 15370, mitigation includes measures that "avoid, minimize, rectify, reduce or eliminate, or compensate" for the impact. For example, mitigation includes *"Minimizing impacts by limiting the degree or magnitude of the action and its implementation (§15370(b))"* or *"Compensating for the impact by replacing or providing substitute resources or environments (§15370(e))."*

All measures ostensibly feasible should be included in the DEIR/S and subsequent documents. Each measure should be discussed, as well as the reasoning for selection or rejection. A measure brought to the attention of the Lead Agency should not be left out unless it is infeasible on its face.

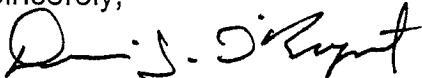
Finally, when presenting mitigation measures in the DEIR/S, it is important to note that mitigation should be specific, measurable actions that allow monitoring to ensure their implementation and evaluation of success. A mitigation consisting only of a statement of intention or an unspecified future action may not be adequate pursuant to CEQA.

Information about agricultural conservation easements, the Williamson Act and provisions noted above is available on the Department's website or by contacting the Division at the address and phone number listed below. The Department's website address is:

<http://www.conservation.ca.gov/dlrp/index.htm>

Thank you for the opportunity to comment on this NOP. The Department looks forward to receiving a copy of the DEIR/S. If you have questions on our comments or require technical assistance or information on agricultural land conservation, please contact Jeannie Blakeslee 801 K Street, MS 18-01, Sacramento, California 95814; or, phone (916) 323-4943.

Sincerely,



Dennis J. O'Bryant  
Acting Assistant Director

cc: State Clearinghouse

